


To: The Honorable Mayor and City Council

From: Ruby Johnson, Purchasing Director 
Purchasing Department

Date: February 14, 2012

RE: **A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AUTHORIZING AN ADDITIONAL EXPENDITURE OF FUNDS TO BRYANT SECURITY CORPORATION FOR SECURITY SERVICES AT THE PROPERTY KNOWN AS BISCAYNE LANDING, IN ACCORDANCE WITH THE TERMS, CONDITIONS AND SPECIFICATIONS OF THE SECURITY GUARD SERVICE AGREEMENT BETWEEN THE CITY OF NORTH MIAMI AND BRYANT SECURITY CORPORATION; PROVIDING FOR AN EFFECTIVE DATE AND FOR ALL OTHER PURPOSES.**

RECOMMENDATION

Staff is recommending that the Mayor and Council authorize additional funding to Bryant Security Corporation for continued security guard services on the Biscayne Landing property until the City enters into a lease agreement with a developer.

BACKGROUND

On April 13, 2011 the City became responsible for the continued-overall operation, repair and maintenance of the City Property and on May 1, 2011 the City entered into a service agreement with the existing companies that managed the Biscayne Landing site with an initial term of four months and then on a month to month bases. Expenditures are now exceeding the threshold that requires Council approval.

Staff is requesting to expend the additional funding to provide for uninterrupted services on the site.

Monthly fees for security guard services average \$10,000 - \$13,000 per month. Total funds paid to date are \$85, 237.22. Pending invoices total \$10,980.64. Services are ongoing.

ATTACHMENT

Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA, AUTHORIZING AN ADDITIONAL EXPENDITURE OF FUNDS TO BRYANT SECURITY CORPORATION FOR SECURITY SERVICES AT THE PROPERTY KNOWN AS BISCAYNE LANDING, IN ACCORDANCE WITH THE TERMS, CONDITIONS AND SPECIFICATIONS OF THE SECURITY GUARD SERVICE AGREEMENT BETWEEN THE CITY OF NORTH MIAMI AND BRYANT SECURITY CORPORATION; PROVIDING FOR AN EFFECTIVE DATE AND ALL OTHER PURPOSES.

WHEREAS, On April 14, 2011, the City of North Miami ("City") entered into a Security Guard Service Agreement ("Agreement") with Bryant Security Corporation ("Contractor") for Security Services at the property known as Biscayne Landing; and

WHEREAS, the initial term of the Agreement was for one hundred twenty (120) days, continuing on a monthly basis until terminated by either party; and

WHEREAS, Article 2 of the Agreement provides that in the event the Agreement is renewed on a monthly basis, the security guard rates provided for in the Agreement will remain in full force and effect; and

WHEREAS, the City is responsible for the continued operation, repair and maintenance of the Biscayne Landing Property until such time that the City enters into a land lease development agreement with a developer; and

WHEREAS, the City Manager has determined that it is in the best interest of the City to expend the additional funds, in order to maintain and extend without interruption, the required Security Services to the Biscayne Landing site.

NOW THEREFORE, BE IT DULY RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF NORTH MIAMI, FLORIDA:

Section 1. Authorization of Expenditure. The Mayor and City Council of the City of North Miami, Florida, hereby authorize an additional expenditure of funds to Bryant Security Corporation for Security Services at the property known as Biscayne Landing, in accordance

with the terms, conditions and specifications of the Security Guard Service Agreement between the City of North Miami and Bryant Security Corporation, attached hereto as "Exhibit A".

Section 2. **Effective Date.** This Resolution shall become effective immediately upon adoption.

PASSED AND ADOPTED by a _____ vote of the Mayor and City Council of the City of North Miami, Florida, this _____ day of February, 2012.

ANDRE D. PIERRE, ESQ.
MAYOR

ATTEST:

MICHAEL A. ETIENNE, ESQ.
CITY CLERK

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

ROLAND C. GALDOS
INTERIM CITY ATTORNEY

SPONSORED BY: CITY ADMINISTRATION

Moved by: _____

Seconded by: _____

Vote:

Mayor Andre D. Pierre, Esq.	_____ (Yes)	_____ (No)
Vice Mayor Jean R. Marcellus	_____ (Yes)	_____ (No)
Councilperson Michael R. Blynn, Esq.	_____ (Yes)	_____ (No)
Councilperson Scott Galvin	_____ (Yes)	_____ (No)
Councilperson Marie Erlande Steril	_____ (Yes)	_____ (No)



BRYANT
SECURITY CORPORATION

SECURITY GUARD SERVICE AGREEMENT

This Agreement ("Agreement") by and between **City of North Miami** (hereinafter referred to as the "CLIENT") and BRYANT SECURITY CORPORATION (hereinafter referred to as "BRYANT"), having been duly entered into on **April 14, 2011**.

WHEREAS, the CLIENT desires that BRYANT furnish guards at its premises.

NOW THEREFORE, in consideration of the promises herein contained and other valuable considerations, receipt of which is hereby acknowledged, the parties hereto agree as follows:

(1) **Guards and Rates.** During the term of this Agreement, the CLIENT agrees to exclusively use BRYANT's security guards. BRYANT agrees to furnish uniformed guards in accordance with this Agreement at the CLIENT'S premises described as follows: **Biscayne Landing** for which the CLIENT agrees to pay BRYANT the following rates:

UnArmed Security Officer..... \$ 15.65 per hour
Cell Phone \$ 22.00 per week
Holidays \$ 1.5 times regular rate

- Rates are based on the number of weekly hours of service as stated in item 3.

Holiday rates will be billed for the following holidays: Memorial Day, 4th of July, Labor Day, Thanksgiving, Christmas, New Years Day. In the event of a strike, walk out, slowdown, or other labor disputes, whether involving a labor agreement or not, CLIENT and BRYANT agree to negotiate in good faith a change in the rates set forth in this paragraph with an annual minimum service rate increase of five percent and shall additionally be adjusted automatically to reflect any and all increases after the date hereof in applicable federal and/or state and/or county minimum wage rates, FICA rates, federal and state unemployment tax rates and worker's compensation costs. Any adjustment to the contract rate shall be an amount equal to any cost increase, if any, incurred by BRYANT. CLIENT agrees to pay all sales and use tax now or hereafter levied on the services provided hereunder. 120 days (R.B.)

(2) **Commencement of Services and Term.** Services furnished by BRYANT hereunder shall commence on April 14, 2011 [(the date above, if left blank)] and shall continue for one (1) year therefrom, unless this Agreement is earlier terminated in accordance with its terms. If not earlier terminated, this Agreement shall automatically renew for an additional one (1) year period unless terminated in writing by either party at least thirty (30) days prior to the first anniversary of the commencement of BRYANT's services hereunder. If this Agreement is automatically renewed for an additional (one year) period, the CLIENT agrees to pay BRYANT's rates for guards and services then in effect, otherwise all terms and conditions of this Agreement shall remain in full force and effect. month (R.B.) month (R.B.)

(3) **Services.**

Number of Guards. CLIENT agrees to pay for and use the following numbers of guards for the following services:

1 Unarmed guard
168 Hours per week

CLIENT Rights and Responsibilities. CLIENT shall provide the location of the guard posts, the routes for patrols and such other information that may be requested by BRYANT, as well as such other information that may be necessary for BRYANT to render the services provided hereunder. Unless provided otherwise herein, CLIENT agrees to provide, maintain and keep clean the areas constituting the guard posts and all property used in connection with roving or mobile patrols (such as golf carts) and other services rendered by BRYANT. CLIENT may not decrease the number of guards without BRYANT's prior written consent. If CLIENT desires that BRYANT provide additional guards, CLIENT shall deliver written notice to BRYANT at least fourteen (14) calendar days prior to the date such additional guards are needed, providing in such notice the number of, and the dates on which, such guards are needed as well as the posts and patrols for which they are needed. BRYANT may, if

requested by CLIENT and if guards are available, provide additional guards sooner than fourteen (14) calendar days after receipt of CLIENT's written request therefore, provided, that CLIENT shall pay 1.5 times the regular rate for such guards during the early deployment of such guards.

c) **Performance of Services; CLIENT Instructions.** The guards provided by BRYANT shall render services in accordance with BRYANT'S standard practices and procedures, which BRYANT may change from time to time in its absolute discretion and without prior written notice to CLIENT, and BRYANT shall have absolute control over the method(s) by which it accomplishes the services it agrees to provide under this Agreement. CLIENT may change the location(s) of guard posts and the routes of the mobile patrols by delivering written notice of such change at least five (5) business days prior to effecting the change.

Notwithstanding anything in this Agreement to the contrary, in the event CLIENT, its guests, invitees, licensees, officers, employees, agents, members or representatives request that a guard perform services other than those within the scope of this Agreement, CLIENT agrees that CLIENT is responsible for and will indemnify and hold harmless BRYANT, its guards, agents, officers, directors, shareholders, partners, or employees against any and all damages in any manner resulting from or connected with the performance or omission of such services, whether caused by BRYANT, its guards, agents, officers, directors, shareholders, partners, or employees, including, without limitation, their respective negligence or otherwise. Services outside the scope of this Agreement are services that are not security guard services and include, by way of example and not of limitation, directing traffic, carrying and holding packages and all practices and procedures for rendering guard services that are not BRYANT's standard practices and procedures (unless such procedures were pre-approved by BRYANT in writing as provided herein). CLIENT understands and agrees that BRYANT's guards shall have no obligation to perform services outside the scope of this Agreement.

(4) **Independent Contractor.** The parties agree that BRYANT is and shall remain an independent contractor and BRYANT is not and shall not be construed as an employee of CLIENT. BRYANT shall pay for all of the wages of the guards assigned to CLIENT's premises together with the social security, Medicare, unemployment compensation and other taxes and fees required to be paid by a employer under federal and state law.

(5) **Limitation of Liability; No Warranties or Guarantees** The parties agree that BRYANT is not an insurer of either the CLIENT's property or the safety of persons or property located at or by the CLIENT's premises, that, BRYANT is not rendering security consulting services and that all charges and fees charged and provided for herein are based solely on the cost of BRYANT's provision of security guard services for CLIENT. CLIENT is relying on its own investigation and knowledge as to the number and type of security personnel required. BRYANT DOES NOT MAKE ANY REPRESENTATION OR EXPRESS OR IMPLIED WARRANTY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS, THAT THE SYSTEM OR SERVICE PROVIDED BY BRYANT WILL HAVE ANY SPECIFIC OR GENERAL RESULT, OR AS TO WHETHER ITS SYSTEM OR SERVICES MAY BE COMPROMISED, OR THAT THE SYSTEM OR SERVICE WILL PROVIDE THE PROTECTION FOR WHICH IT IS INTENDED. The parties agree that in the event of loss or damage as a result of the failure of performance, or the defective performance, of the services provided for under this Agreement, BRYANT's liability, if any, for the loss or damage thus sustained shall be limited to the extent of BRYANT's insurance coverage available for such claim. BRYANT shall not be liable under any circumstance for CLIENT's consequential damages, including, without limitation, loss of income, loss of profits, loss of rents or other revenues, loss of business opportunity or loss of goodwill, in each case however occurring. The provisions of this paragraph shall apply if the loss or damage, irrespective of loss or origin, results, directly or indirectly, to persons or property for performance or non-performance of obligations imposed by this Agreement or from negligence, active or otherwise, of BRYANT its agents or employees. BRYANT shall not at any time, be liable or responsible for the criminal conduct or intentional criminal acts of any person, party or entity at any time. In case a claim is made by any person, entity or corporation, including CLIENT, against BRYANT, its agents or employees, CLIENT shall not be entitled to retain or offset the amount of any such claim out of monies due or owing to BRYANT hereunder.

(6) **Payment for Services; CLIENT'S Default.** BRYANT shall invoice CLIENT for services rendered at the rates provided for herein. Each invoice shall be deemed accurate, correct and without objection unless CLIENT notifies BRYANT in writing of its objections to the invoice within five (5) business days of its receipt by CLIENT. CLIENT's objections, if any, shall specifically set forth the basis for the objection and the amount of the invoice to which CLIENT objects. Each invoice shall be due and payable upon receipt. If BRYANT does not receive payment in full of an invoice within ten (10) calendar days after the date of its receipt by CLIENT, the unpaid balance of such invoice shall accrue interest at the rate of 1-1/2% per month or the highest rate permitted under applicable law, whichever is lower, from the date of its receipt by CLIENT until paid in full without offset of any kind or nature, regardless of whether CLIENT has objected to any such invoice. In addition to all other rights and remedies available to BRYANT, BRYANT may terminate this Agreement if CLIENT fails to pay in immediately available funds the balance(s) of any outstanding invoice within 24 hours of CLIENT's receipt of BRYANT's written demand for such payment, regardless of whether CLIENT has objected to any such payment. The individual signing this

Agreement on behalf of CLIENT, agrees that he/she shall be personally responsible for any and all of CLIENT's obligations to pay BRYANT under this Agreement, and said individual liability shall be joint and several with BRYANT and shall survive termination and expiration of this Agreement. CLIENT's obligation to pay for BRYANT's services rendered by BRYANT shall survive termination and expiration of this Agreement.

(7) **Retention of BRYANT Employees.** It is agreed between the parties that BRYANT is not an employment agency and that BRYANT expends significant time and money in procuring, training and retaining its employees, including those that are assigned to CLIENT'S premises and facilities. Therefore, in consideration of BRYANT assigning security guard personnel to CLIENT'S premises and facilities, CLIENT agrees that it will not employ or hire directly or indirectly, or allow any provider of security services to station or utilize at CLIENT's premises and facilities, any person who has been employed by BRYANT within twelve (12) months following the last date on which BRYANT employed such person. The parties agree that the amount of actual damages which BRYANT may suffer as a result of CLIENT's breach of its obligations under this paragraph are not readily ascertainable. Consequently, the parties agree that CLIENT shall pay BRYANT \$7,500.00 for each employee hired or used at CLIENT's premises and facilities in violation of the provisions of this paragraph as liquidated and agreed upon damages, and that any such liquidated damages shall not in any way be construed as a penalty, and are in addition to and not exclusive of any and all damages or other remedies available to BRYANT. This paragraph shall survive termination and expiration of this Agreement.

(8) **Insurance.** BRYANT shall carry and maintain general liability insurance and workers' compensation insurance as required under Section 493 of the Florida Statutes.

(9) **Termination.** In addition to BRYANT's right to terminate this Agreement for nonpayment, BRYANT may terminate this Agreement with thirty (30) days prior written notice in the event BRYANT determines, in its sole and absolute discretion, that CLIENT's changes in the scope and amount of guard duties make it impracticable for BRYANT to properly service CLIENT's needs; or the neglect or failure of CLIENT to perform or observe any of the terms, obligations, covenants or conditions contained in this Agreement on CLIENT's part to be performed or observed, other than the payment of services referred to in paragraph 6 above, which is not remedied by CLIENT within thirty (30) days after BRYANT shall have given to CLIENT written notice specifying such neglect or failure.

CLIENT may terminate this Agreement with ten (30) days prior written notice given by CLIENT to BRYANT after the occurrence of an "Event of Default" by BRYANT. For the purposes of this Agreement, "Event of Default" means BRYANT's failure to cure any default in any obligation, covenant, or agreement imposed upon BRYANT by this Agreement, within thirty (30) days of written notice of such default from CLIENT to BRYANT; provided, however, that if the default is of a nature that a cure cannot be accomplished with reasonable diligence within thirty (30) days, and if BRYANT commences to cure such default promptly after receipt of notice thereof from CLIENT, and thereafter prosecutes the curing of such default with reasonable diligence, the period for curing such default shall be extended for such period of time as may be necessary to cure such default with reasonable diligence.

(10) **Damages.** If BRYANT terminates this Agreement, CLIENT shall remain liable to BRYANT, for damages, for the sums equal to the services which would have been payable by CLIENT had this Agreement not so terminated. CLIENT's liability as aforesaid shall survive the termination of this Agreement. Suit(s) for the recovery of such damages or any installments thereof, or acceleration of any all sums due during the remaining Agreement terms, may be brought by BRYANT from time to time at its election, and nothing contained herein shall be deemed to require BRYANT to postpone suit until the date when the term of this Agreement would have expired nor limit or preclude recovery by BRYANT against CLIENT of any sums or damages which, in addition to the damages particularly provided above, BRYANT may lawfully be entitled by reason of any default hereunder on the part of the CLIENT. The various rights, remedies and elections of BRYANT reserved, expressed or contained herein are cumulative and not one of them shall be deemed to be exclusive of the others or of such other rights, remedies, options or elections as are now or may hereafter be conferred upon BRYANT by law.

(11) **Enforcement Costs; Jurisdiction and Venue.** If any legal action or other proceeding is brought for the enforcement or interpretation of this Agreement, including any action at law or equity, because of an alleged dispute between the parties hereto, breach, default, misrepresentation or non-payment in connection with any provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees, court costs and all expenses even if not taxable as court costs (including, without limitation, all such fees, costs and expenses incident to appeals), in that action or proceeding, in addition to any other relief to which such party or parties may be entitled. This Agreement shall be construed in accordance with the law of the State of Florida, without regard to conflict of law principles. The parties stipulate and consent to the exclusive venue and jurisdiction of the State Courts of the 11th Judicial Circuit in and for Miami-Dade County, Florida for any and all controversies, claims or disputes, arising out of, relating to or in connection with the interpretation or enforcement of this Agreement. The parties expressly and specifically waive any other jurisdiction and venue, including, but not limited to, arbitration, and waive any right to trial by jury. This paragraph shall survive termination and expiration of this Agreement.

(12) **Entire Agreement.** This Agreement, together with all documents incorporated herein by reference, constitutes the entire Agreement between the parties. No party shall be bound by, or liable for any statement, covenant, representation, promise, inducement or understanding that is not set forth herein. The contents of any and all bids, proposals, discussions, negotiations or exceptions, offered or taken which are not set forth herein are not a part of this agreement and shall have no effect or influence upon its interpretation. No amendments or modifications of any of the terms and conditions shall be valid unless reduced to writing and signed by the parties.

(13) **Security Interest.** To secure CLIENT's obligations hereunder, CLIENT hereby grants to BRYANT a security interest in and to all of CLIENT's now owned or hereafter acquired assets, personal property, goods, equipment, fixtures and trade fixtures, inventory, work in process, raw materials, materials used or consumed in any business, accounts, accounts receivable, contract rights, chattel paper, general intangibles, vehicles, leases and leasehold interests, documents, instruments, investment property, financial assets, securities accounts, and security entitlements, together with all increases in said property, all added and substituted parts, accessions, accretions, and all cash and noncash proceeds, products, offspring, rents and profits of all of the foregoing collateral, and all payments under insurance of such collateral. CLIENT shall take such action (including, without limitation, the execution and delivery of financing statements, assignments and other documents) as BRYANT may reasonably request to effect, perfect or evidence the security interest granted hereunder.

(14) **Notices.** Any notices required or allowed to be sent under this Agreement shall be deemed received and delivered immediately, if hand-delivered, or three (3) calendar days after deposit in the US Mail, if sent by certified mail, return receipt requested (regardless of whether the intended recipient refuses delivery), to the addresses set forth below. A change in address is effective upon delivery of notice of such change in accordance with this paragraph.

(15) **Assignment or Transferability.** CLIENT shall not assign or transfer or purport to assign or transfer any of its rights or obligations under this Agreement without the prior written consent of BRYANT, which BRYANT may withhold for any reason, in its sole and absolute discretion. This provision shall apply to a transfer of the majority stock of CLIENT as if such transfer were an assignment or transfer of this Agreement. Any purported assignment or transfer by CLIENT done without BRYANT's prior written consent shall be deemed void and of no force and effect any violation of the provisions hereinabove set forth shall constitute a default in this Agreement and BRYANT may, within its sole and absolute discretion, immediately terminate this Agreement.

This Agreement shall inure for the benefit of and be binding upon the respective successors in title and permitted assignees of CLIENT, who shall be bound by the terms identical to the terms of this Agreement, including the terms of this clause as regards any subsequent assignment or transfer.

(16) **Force Majeure.** The obligation of BRYANT hereunder shall not be affected, impaired or excused, nor shall BRYANT have any liability whatsoever to CLIENT, because BRYANT is not able to fulfill, or is delayed in fulfilling any of its obligations under this Agreement by reason of act of God, war, strike, other labor trouble, governmental pre-emption of priorities or other controls in connection with the national or other public emergency or labor or materials, or any other cause, whether similar or dissimilar, beyond BRYANT's control.

For BRYANT:

Bryant Security Corporation
16840 NE 19th Avenue
Miami, FL, 33156

By: _____

Shay Ben-David
President

Date: _____

4/14/11

For CLIENT:

City of North Miami
Russell Benford
City Manager
776 NE 125th Street
North Miami, FL 33164

By: _____

Russell Benford
City Manager

Date: _____

4-20-11